UNITED
NATIONS

S

Security Council

Distr.
GENERAL

S/26545
6 October 1993

ORIGINAL: ENGLISH

# LETTER DATED 5 OCTOBER 1993 FROM THE SECRETARY-GENERAL ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

By a letter of 9 February 1993 (S/25274), I forwarded to the President of the Security Council an interim report of the Commission of Experts established pursuant to Security Council resolution 780 (1992).

On 6 September 1993, the Acting Chairman of the Commission forwarded to me a second interim report, which describes the work of the Commission in the intervening seven months and outlines its projected future programme, which will enable the Commission to provide me with its final conclusions. The report is accompanied by several documents prepared by or under the supervision of the members of the Commission. Citing the preliminary nature and volume of these documents, the Commission has suggested that, rather than being annexed to the report, they should be made available for consultation by the members of the Security Council.

On 31 August 1993, during my recent visit to Geneva, I took the opportunity to meet with the members of the Commission. This enabled me to learn at first hand of the nature of their work and to discuss with them their future programme and the relation of their work to that of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, which is in the process of being established. The members of the Commission expressed keen interest in assisting the Tribunal to the greatest extent possible.

I must also, with deep regret, inform you that the Acting Chairman of the Commission, Professor Torkel Opsahl of Norway, died in Geneva on 16 September 1992. Professor Opsahl had only recently agreed to assume the functions of Chairman of the Commission in place of Professor Frits Kalshoven of the Netherlands, who is on indefinite leave for medical reasons. Professor Opsahl had made an important contribution to the work of the Commission and his untimely death is a tragedy for his family and friends and a great loss to the Commission, to the United Nations and to the international legal community. In the light of these developments, I propose to appoint one of the remaining members of the Commission, Mr. Bassiouni, as the new Chairman of the Commission, and I have formally requested that the Netherlands and Norway

provide me with the names of suitable replacements, giving preference to women, in place of the late Professor Opsahl and of Professor Kalshoven. I shall inform the Council in due course of the results of the proposed changes.

(Signed) Boutros BOUTROS-GHALI

Annex

Second interim report of the Commission of Experts established pursuant to Security Council resolution 780 (1992)

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## INTRODUCTION

1. While the first interim report of the Commission of Experts 1/ covered the period from November 1992 to January 1993, the present second interim report covers the period from February to August 1993. It describes the steps the Commission has taken towards the implementation of the programme of work outlined in the earlier report, and the progress achieved. 2/

2. It also sets forth how the Commission plans to pursue the implementation of its programme of work, in accordance with its mandate as defined in paragraph 2 of Security Council resolution 780 (1992), 3/ and paying due heed to the last preambular paragraph of Security Council resolution 827 (1993), specifying that, pending the appointment of the Prosecutor of the International Tribunal established by that resolution for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia, the Commission should continue on an urgent basis the collection of information relating to evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law as proposed in its first interim report.

3. During the period covered by the present report, the Commission, whose composition remained unchanged, 4/ held four sessions: its fourth, fifth, sixth and seventh sessions, held on 1 to 3 March, 24 and 25 May, 13 and 14 July and 30 and 31 August 1993 respectively. The Commission continued to discuss various substantive, organizational and methodological issues related to its mandate. At its seventh session, the Commission also discussed and approved the present interim report.

4. The Commission continued to attach considerable importance to the coordination of its efforts with those of other United Nations bodies and intergovernmental organizations concerned with the situation in the territory of the former Yugoslavia. It has maintained regular working cooperation with the Commission on Human Rights and its Special Rapporteur, Mr. Tadeusz Mazowiecki. The said Commission, in paragraphs 20 and 22 of its resolution 1993/7, requested the Special Rapporteur, States, United Nations bodies, including the United Nations Protection Force (UNPROFOR), United Nations treaty bodies and specialized agencies as well as international humanitarian organizations to submit to the Commission of Experts all pertinent information which they might possess and urged States to provide to it resources, personnel and assistance in order to fulfil its mandate. 5/

5. The Commission has continued to be in touch with the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia through one of them who is also the Special Representative of the Secretary-General coordinating all the United Nations activities in that area.

6. Close cooperation has been maintained with UNPROFOR. The Commission wishes to place on record its gratitude for the assistance provided by UNPROFOR with its on-site investigations in the territory of the former Yugoslavia, both at the preparatory stage as well as once in the area.

7. The Commission has also maintained contacts with the representatives of a number of Permanent Missions to the United Nations Office at Geneva for the purpose of soliciting their support and cooperation as regards the Commission's plan of work.

8. The Commission has continued to maintain contacts with the United Nations High Commissioner for Refugees and with the International Committee of the Red Cross (ICRC). The Commission, furthermore, has established contacts with the United Nations Educational, Scientific and Cultural Organization (UNESCO) and Amnesty International as well as with the European Community Monitoring Mission (ECCM). This latter organization has prepared briefings and provided invaluable assistance to the Commission with certain exploratory missions, such as the one to Dubrovnik (20-22 May 1993) undertaken by the Rapporteur for on-site investigations.

## I. IMPLEMENTATION OF THE COMMISSION'S PROJECTED PLAN OF WORK

9. As indicated in paragraphs 65 and 66 of the first interim report, the Commission's plan of work includes, besides an updating of its database, selective in-depth investigations in the following areas:

(a) Mass killings and destruction of property;

(b) Treatment of prisoners and detainees;

(c) Systematic sexual assaults;

(d) "Ethnic cleansing".

10. Paragraph 67 of the same report outlines as short-term objectives of the Commission:

(a) To conduct further investigations into mass killings and destruction of property in the Vukovar area by expanding the scope of the various investigations conducted by forensic experts from Physicians for Human Rights and by deploying a team of military lawyers, police investigators and necessary support personnel in the Vukovar area;

(b) To conduct an on-site investigation into the treatment of prisoners and detainees at two or more camps or detention centres at places in Bosnia and Herzegovina yet to be specified;

(c) To study all available reports on systematic sexual assaults and determine as soon as possible the most effective way to approach the problem and whether on-site investigations should be undertaken;

(d) To study all available reports on "ethnic cleansing" and determine as soon as possible the most effective way to approach the problem and whether on-site investigations should be undertaken.

11. To implement this plan of work, which was endorsed by the Secretary-General in his letter dated 9 February 1993 addressed to the President of the Security

Council, 6/ the Commission continued the work on the database. It also undertook a number of projects specifically designed to obtain further information and to test methods of investigation and verification of allegations.

## A. Activities related to the plan of work as a whole

12. It followed from the nature of the projected plan of work that the Commission would be able to implement it only with the cooperation of Governments and local authorities that actually controlled the respective parts of the territory of the former Yugoslavia. The Commission therefore made special efforts to obtain such cooperation.

### 1. Mission to Zagreb, Belgrade, Sarajevo and Ljubljana

13. From 18 to 29 April 1993, the Commission sent a delegation to Zagreb, Belgrade, Sarajevo and Ljubljana. 7/ The delegation was composed of the Chairman and the two rapporteurs, accompanied by the Assistant Secretary of the Commission. It held talks with representatives of the Governments in these capitals, including Deputy Prime Ministers and Ministers for Foreign Affairs, Defence and Justice. It also had meetings with officials representing State commissions for war crimes, involved with legal aspects of war crimes documentation or investigation in the respective capitals.

14. During all the meetings, the delegation stressed the impartial nature of the Commission and its methods of work. It explained the Commission's mandate and provided information on its computer database, its short-term objectives and its long-term plan of work.

15. The authorities in Zagreb, Belgrade and Sarajevo assured the delegation of their support for the Commission's plan of work and promised their cooperation in the implementation of specific projects of the Commission in the territories under their control.

16. At the meetings with representatives of State commissions for war crimes in the four capitals, the delegation underscored the importance for the Commission to receive reports relating to violations of international humanitarian law, particularly of the 1949 Geneva Conventions and the two 1977 Additional Protocols, so as to assist the Commission to fulfil its mandate. It received promises of cooperation from all these commissions. It also offered them technical help and provided them with forms for the collection of such information.

### 2. Mission to Knin

17. Given the fact that one of the mass grave sites (Ovcara), the excavation of which is included in the Commission's plan of work, is situated in the territory under control of the self-proclaimed Serb administration in Knin, the Commission took steps to ensure the cooperation of that administration in the implementation of this project. During the visit to Belgrade in April, the

delegation briefly discussed the matter with a representative of that administration. Subsequently, the Rapporteur for on-site investigations, on behalf of the Commission, went to Knin from 17 to 19 May 1993 and met with the Prime Minister of the Knin administration and his advisers. On that occasion the Rapporteur obtained a promise of cooperation also from this administration.

18. On the same occasion, the Rapporteur met with the local officials responsible for collecting information and evidence of war crimes and, on behalf of the Commission, urged them to send their reports to the Commission.

## B. Activities related to information-gathering and to the database

19. In the period covered by the present interim report, the Commission, pursuant to the requests contained in Security Council resolutions 771 (1992) and 780 (1992), has again received thousands of pages of documentation as well as video information containing allegations of grave breaches of the Geneva Conventions and other violations of international humanitarian law committed in the territory of the former Yugoslavia. In addition, the Commission has solicited documentation and supplemental information from various sources relating to the situation in the territory of the former Yugoslavia. The Commission has also requested and received information during its investigative missions in the territory of the former Yugoslavia.

### 1. Sources of information before the Commission

20. As of 31 August 1993, reports containing allegations of grave breaches of the Geneva Conventions and other violations of international humanitarian law have been submitted by the Governments of Austria, Bosnia and Herzegovina, Canada, Croatia, Denmark, Germany, Slovenia, the United Kingdom of Great Britain and Northern Ireland, the United States of America and the Federal Republic of Yugoslavia (Serbia and Montenegro).

21. The Commission has also continued to receive reports from United Nations bodies, intergovernmental organizations, international non-governmental organizations (NGOs), various national organizations and private sources.

22. The United Nations bodies and authorities in question include the Special Rapporteur appointed under resolution 1992/S-1/1 of the Commission on Human Rights to investigate first hand the human rights situation in the territory of the former Yugoslavia, the Commission on Human Rights and the United Nations High Commissioner for Refugees.

23. In addition, the Conference on Security and Cooperation in Europe (CSCE), the Council of Europe and ECMM have submitted reports or documentation to the Commission.

24. During the period concerned, the Commission has received reports or documentation in the public domain from a number of international NGOs: Amnesty International, ICRC, Médecins sans frontières, Helsinki Watch, Humanitarian Law Fund, International Human Rights Law Group and Danish Helsinki Committee.

## 2. Requests by the Commission for information from specific sources

25. The Commission has requested information provided to the competent national authorities by refugees and other persons having left the war zones and now residing in Austria, Denmark, Germany, the Netherlands, Sweden, Switzerland and the United Kingdom. Information of this kind has begun to come to the Commission from the Governments of Austria, Denmark and Germany. The Government of the United Kingdom informed the Commission in March 1993 that it was in the process of collecting that type of information.

26. The Commission has also solicited, through the Governments of the United Kingdom, Austria, Germany and the Netherlands, video information from the respective television companies concerning alleged violations of international humanitarian law in the territory of the former Yugoslavia. The British Broadcasting Corporation (BBC) has already submitted video information to the Commission. Moreover, footage of published television reports from all of the major networks in the United States (American Broadcasting Company (ABC), National Broadcasting Corporation (NBC), Columbia Broadcasting System (CBS) and Cable News Network (CNN)) as well as Independent Television News (ITN) and from TRV Belgrade and Television Tuzla has been obtained. The Austrian broadcasting company has indicated that it intends to provide video information to the Commission. To demonstrate how video footage can supplement the written record and assist in identifying persons and places, the Rapporteur for the gathering and analysis of facts has edited some of the footage in the Commission's possession and prepared a 60-minute video tape for use by the Commission.

27. Moreover, the Commission has contacted international NGOs, human rights organizations and private experts in North America and Europe. The Commission has thus received information from Helsinki Watch, the American Jewish Congress, the Women's Coalition Against Ethnic Cleansing, the Zenica Centre for Investigation of War Crimes and Crimes of Genocide on Muslims (Bosnia and Herzegovina), the Croatia Documentation Centre and State commissions on war crimes (in Belgrade, Sarajevo and Zagreb). Likewise, the Commission has been gathering valuable information from print and electronic media. Minnesota Advocates for Human Rights is assisting the Commission's Rapporteur on the gathering and analysis of facts to compile and analyse published articles relating to alleged violations.

## 3. Processing of information

28. As mentioned in paragraphs 22 et. seq. of its first interim report, the Commission has set up a database designed to provide a comprehensive, consistent and manageable record of all reported alleged grave breaches of the Geneva Conventions and other violations of international humanitarian law being committed in the former Yugoslavia. The inputting of information into the database is being effected in the International Human Rights Law Institute of DePaul University (Chicago, United States) under the supervision of the Rapporteur on the gathering and analysis of facts, who is also the President of the Institute. The offices where the database has been set up are protected by an electronic security system. Originals and photocopied documents are kept in

locked filing cabinets. At the end of June 1993, the Chairman went to Chicago to observe the work on the database.

29. As of 31 August 1993, the database contained over 3,000 "cases", representing thousands of alleged violations and incidents of victimization. The database operates on several levels and manages multiple categories and subcategories of information, such as the violations alleged; victim, perpetrator and witness identification; source; location; evidence; and military affiliation data.

30. Information, either received directly by the Rapporteur or forwarded to him from the Commission secretariat at the United Nations Office at Geneva, is entered into the database by analysts with legal and/or human rights experience. Prior to data entry, the analysts review documents and identify information in the light of the categories and subcategories contained in the database. The information is then entered into the appropriate categories. A narrative description of each report that captures every important item of information relating to a particular incident is also entered.

31. Apart from storing information in an organized manner, the database is capable of performing a number of functions that will prove particularly useful to the Commission's work, such as generating reports by category, conducting context-sensitive searches, assembling information into case files and creating graphs that demonstrate trends in the data.

### 4. Examination and analysis of information

32. The cases already entered into the database reveal that alleged violations of international humanitarian law, mostly against the civilian population, have affected thousands of individuals on all sides of the conflicts in the territory of the former Yugoslavia. The majority of reported violations concern killings, torture, kidnapping/hostage-taking, forced eviction and imprisonment. A large number of alleged rapes have also been reported.

33. The database can only be as useful and comprehensive as the information and reports upon which it is based. Since the Commission began compiling information in November 1992, the character and quality of the information submitted by the various sources has changed little. Many of the reports lack sufficient detail about the reported event, i.e. information relating to the identity of victims, perpetrators, witnesses, etc. Only limited information on "order of battle" and the location of military units at a given time is presently available. This information is critical in order to identify military units and to establish "command responsibility". Finally, the actual sources upon which reports are based are not verifiable at this time. Many reports do not disclose original sources, nor do they state whether any original evidence may be available (e.g. affidavits of victims, witnesses or perpetrators; photographs; medical reports, autopsy reports). It could be that those who prepared the reports may have relied on diplomatic correspondence or intelligence sources and may not be able to reveal the information needed. Other sources for these reports may be the media, which would not be useful unless the original media source could be verified.

34. Thus, most of the reports received are, by themselves, of qualified evidentiary value. However, supplemented with other information, these reports form a substantial basis for further investigative work, which might lead to prosecution.

35. While continuing to enter new information into its database, the Commission has recently started the analytical phase of the work. In this connection, the Rapporteur has prepared "test" analyses of four incidents/locations relating to serious violations of international humanitarian law. Preliminary reports have been submitted to the Commission on the following:

(a) The abduction of civilians and military personnel from the Vukovar Hospital and the execution and mass grave at Ovcara;

(b) Detention centres and violations alleged to have been committed in and around the town of Brcko (including the Luka camp);

(c) Incidents relating to "ethnic cleansing" and detention centres in the area between Prijedor and Banja Luka (including the mass execution of prisoners at Keraterm and the alleged violations at the Omarska iron mine);

(d) Allegations of mass killings and "ethnic cleansing" perpetrated by both Bosnian Serbs and Bosnian Muslims in the Bratunac/Srebrenica region.

36. Likewise, a day-to-day chronological analysis has been prepared of the 17-month siege of Sarajevo (April 1992-August 1993). The study should enable investigative teams in Sarajevo better to identify incidents that require further investigation. The study also concentrates on important political developments associated with an increase or decrease of military activity in and around the city.

37. Lastly, two databases have been established to catalogue information pertaining to 353 reported detention centres (e.g., dates of operation, number of prisoners, prisoner exchange data) and over 200 reported mass graves 8/ (e.g., location of the grave, number of persons reportedly buried, ethnicity of persons in the grave).

### 5. Computer linkage between the database and the Commission secretariat in Geneva

38. The Commission has ordered computer equipment for its secretariat in Geneva. The equipment, which is now being delivered, will provide direct computer linkage between the database in Chicago and the computers at the Commission secretariat. The computer equipment will have a read-out capability. The Commission therefore will know at all times the type of information that has been inputted into the database by access to the Internet network through the International Computing Centre at the United Nations Office at Geneva. Data entry will continue to be effected under the supervision of the Rapporteur on the gathering and analysis of facts.

## C. Activities related to in-depth investigations

39. In order to verify allegations of grave breaches and other violations of international humanitarian law contained in the numerous reports received by the Commission, several investigative missions were undertaken. Whenever possible, these missions were preceded by a careful analysis of alleged facts available in the database and by the gathering of such further corroborative evidence as could be obtained from credible sources.

### 1. Reconnaissance mission to Vukovar

40. From 5 to 16 March 1993, the Commission sent a reconnaissance mission to the Vukovar area. The mission, led by the Rapporteur for on-site investigations, visited Vukovar and the mass grave site at Ovcara, as well as some other regions of the former Yugoslavia. The Rapporteur was accompanied by two members of a team of military lawyers and police investigators placed at the Commission's disposal by the Government of Canada and by two representatives of Physicians for Human Rights, the Boston-based NGO that has undertaken to help the Commission with exhumations of mass graves. 9/

41. The purpose of the mission was to prepare for the excavation of the mass grave at Ovcara and to work out methodological and practical recommendations for other investigations into mass killings and destruction of property, treatment of prisoners and detainees and systematic sexual assaults and "ethnic cleansing". On the basis of its findings, the Commission arrived at the following conclusions.

42. The deteriorating conditions in various areas of the territory of the former Yugoslavia made some adjustments necessary both in the Commission's plan of work and in the timetable and the methods of its implementation.

43. With regard to the excavation of the mass graves at Ovcara and at another site in UNPA Sector West in particular, it was accepted that this would require a great deal more resources than originally envisaged by the Commission or Physicians for Human Rights. The additional requirements included the services of a self-sustaining military engineering unit (40-50 persons) for the total period of the two excavations, estimated at 8 to 10 weeks. Since UNPROFOR was unable to provide such a unit, it would have to be made available by Governments of States Members of the United Nations.

44. Another additional requirement for this mission would be the availability of digging equipment, means of transportation of the remains for medico-legal examination, container and refrigeration units, water pumps, an electric generator, housing units, etc.

45. As regards the investigation of events in prison camps and other places of detention, the deployment of investigative teams in conditions of adequate security to existing camps where major violations of international humanitarian law were actually occurring would require the acquiescence of the detaining authorities. In the alternative, teams would have to confine their investigations to interviews of witnesses and the gathering of documentation away from the camp site.

### 2. Reconnaissance mission to Dubrovnik

46. From 20 to 22 May 1993, the Commission sent its Rapporteur for on-site investigations to Dubrovnik to explore the possibility of an on-site investigation into targeting, indiscriminate attacks, destruction of cultural property and "ethnic cleansing" in the area.

47. On the basis of his findings, the Commission concluded that a useful on-site investigation into these matters could be conducted in the Dubrovnik area. Focusing primarily on the question of responsibility for these acts, it might take the shape of an order-of-battle and chain-of-command study to be done by a small team of military law-of-war experts, rather than by criminal investigators.

### 3. Mission to Sarajevo

48. From 20 June to 9 July 1993, the Commission sent an investigative mission to Sarajevo to undertake three studies: a pilot study on systematic rape, a law-of-war study of a specific incident in the battle of Sarajevo and an analytical law-of-war survey of the battle of Sarajevo. The mission was led by the Rapporteur for on-site investigations, who was assisted by a group of Canadian military lawyers and police investigators and by the Deputy Secretary of the Commission. 10/

49. So far as the pilot study on the issue of systematic rape is concerned, the Commission obtained from the Bosnian War Crimes Commission all their information identified as relating to this issue (listing 126 victims, 113 incidents, 252 alleged perpetrators, 73 witnesses and 100 documents). The Commission has also received copies of all the files in the possession of the local authorities and identified as relating to rape. 11/ The information contained in the files is being entered into the database of the Commission of Experts.

50. The lessons learned as a result of this study are:

(a) To collect evidence that would be accepted by courts, there should be direct and continuous coordination with the Bosnian War Crimes Commission and other organizations involved in collecting information, in order to encourage the development of standards of collection which will facilitate the completion of formal investigations and the establishment of prima facie cases;

(b) In order to achieve that goal, dedicated personnel, most effectively those with police investigative and law-of-armed-conflict backgrounds should be deployed as soon as possible in a pre-prosecution investigatory phase;

(c) As the experience in the field showed, the victims of rape had as a rule left their homes and were likely to be found either in refugee camps or to have moved to resettlement. Under these circumstances, small teams, including a high proportion of female personnel, deployed for extended periods of time in those locations would be the most effective means of gathering such information. Cooperation of the Governments providing refugee camps or resettlement for people from the former Yugoslavia is essential for this investigation.

51. The objective of the specific incident study was to prepare a report analysing in depth a specific incident in the siege of Sarajevo to identify specific violations of the law of war, particularly violations in which civilian casualties have occurred, to analyse the circumstances of the incident and to assess the feasibility of identifying and prosecuting alleged offenders, particularly the military commanders.

52. The incident selected for in-depth investigation was the mortar shelling of a soccer game in the Dobrinja suburb of Sarajevo on 1 June 1993 in which 13 persons were killed and 133 were injured. The investigators interviewed several witnesses on the Bosnian side and also reviewed the crater analysis produced by artillery experts. Investigators were unable to interview witnesses on the Serbian side.

53. On the basis of the investigation it is reasonable to conclude that a prima facie case exists, that persons on the Serbian side deliberately attacked civilians and, therefore, committed a war crime. With the information available, it is not possible to identify the alleged offender at present.

54. Another study based on the mission and entitled "The battle of Sarajevo and the law of armed conflict" focuses on combat-related offences, unlawful targeting and the use of unlawful means and methods of warfare. It will be continued during a further mission. The preliminary results show that most of the war crimes committed in Sarajevo have involved attacks on civilian persons and objects. It will be difficult, but not impossible, to compile a reasonably accurate list of persons killed or seriously injured during the siege of Sarajevo, to determine if they were combatants and to determine when, where and how they were killed or injured. Whether or not it is possible to determine which individuals or which units caused civilian casualties, it will certainly be possible to establish that a large number of casualties have been caused by the Bosnian Serb Army forces surrounding Sarajevo during a specific period of time. It will probably also be possible to determine roughly how many of the civilian casualties were caused by some form of sniper fire. It is reasonable to presume that civilian casualties caused by sniper fire are the result of deliberate attacks on civilians, not the result of indiscriminate attacks.

55. The compilation of a chronological and quantitative survey of damage to civilian objects in Sarajevo is more difficult. It would be possible to focus on certain types of objects, e.g. religious, cultural and medical buildings, and determine if there appeared to have been a deliberate attempt to target objects of these types. For example, a detailed study of the shelling of the Sarajevo University Clinical Centre or of the National Library would probably indicate these objects had been deliberately targeted. It may also be possible to establish that a deliberate effort has been made to target religious facilities. The tendency of Bosnia and Herzegovina forces to conceal its resources among civilian objects would probably result in some of the damage to civilian objects caused by Bosnian Serb Army projectiles constituting legitimate collateral damage. There is enough apparent damage to civilian objects in Sarajevo to justify an in-depth study of such damage. For security reasons this type of a study, which would require unimpeded movement for extended periods of time through Sarajevo, was not practicable at the time of the mission.

56. The Commission notes that it will probably be difficult to link specific individuals or specific units to specific incidents in which civilians or civilian objects have been deliberately attacked or subjected to indiscriminate attacks. Whether or not it is possible to develop a firm case against individual soldiers or unit commanding officers, it should be quite practicable to develop a prima facie case against the officer or officers responsible. 12/

### 4. Preparations for investigations of mass grave sites at Ovcara and in Sector West

57. It became clear from the very beginning that an excavation project for mass graves on this scale would take more time and human and material resources than any other on the Commission's programme of work.

58. Physicians for Human Rights set up a 20-member international forensic team that has been prepared since January 1993 to start work with six weeks' notice.

59. However, after the reconnaissance mission in March 1993 13/ it became evident that there were two preconditions for performing this investigation: the cooperation of the local authorities having control over both sites and the availability of a self-sustaining military engineering unit and of specialized technical equipment needed for the job.

60. While by May 1993 the Commission had been able to receive general oral promises of cooperation in both cases from the local administration, 14/ obtaining a military engineering unit (40-50 people) proved to be a time-consuming problem.

61. However, in September 1993, after consultations in the Security Council, 15/ the Government of the Netherlands, responding to the Commission's request, decided to provide such a unit and started training it with a view of making it available for the Commission in October 1993.

62. As to the equipment, the United States Government has pledged to provide a considerable part of it; another part will be provided by the Government of the Netherlands. The remaining equipment will have to be bought or rented by the United Nations.

### 5. Interviews with alleged war criminals

63. The Commission sent one of its members, accompanied by two assistants, to Zagreb from 11 to 14 August 1993, to interview five prisoners of war (POWs) who had been charged by the Croatian authorities with having committed war crimes on Croatian territory. In one case, the POW had already been sentenced to 20 years imprisonment. Four of them had been charged with war crimes committed in the Vukovar area, and the fifth in the Pakrac area.

64. As required under Croatian law the five prisoners were visited and heard in the presence of a judge from the Zagreb District Court. Also present was a member of the Croatian Commission for War Crimes committed in the territory of

Croatia. Police and court files were made available. The judge assisting at the hearing provided copies of essential documents.

65. Several of the prisoners who had allegedly admitted to Croatian authorities committing very serious offences on a large scale modified these statements during the interviews, alleging that their original admissions had been extracted under duress. Some expressed fear of the consequences of speaking to the Commissioner. Assurances about the safety of these alleged perpetrators were received by the Commission from the Croatian authorities in writing.

66. In this connection, at its seventh session, the Commission decided to work out guidelines for future interviews of witnesses and for the hearing of testimonies of alleged war criminals.

### 6. Rape investigations

67. At its sixth session, the Commission decided that further planning for the rape investigation would be done on the basis of the study on systematic sexual assault, 16/ which has since been provided by the Rapporteur on the gathering and analysis of facts. In the meantime, the Commission will proceed with the formation of female investigative teams. The Commission will also determine the most effective way for carrying out such investigation, depending on the location of victims.

68. It is important to note that rape has been reported to have been committed by all sides to the conflict. However, out of 330 reported cases reviewed in the study, the largest number of victims have been Bosnian Muslims and the largest number of alleged perpetrators have been Bosnian Serbs. These alleged perpetrators include military personnel, special forces (some of whom are from outside Bosnia and Herzegovina), local police and civilians.

69. Some of the rape cases are clearly the result of individual or small group conduct without evidence of command direction or of it being part of an overall policy. Others may be a part of an overall pattern. Because of a variety of factors, such a pattern may lead to the conclusion that a systematic rape policy existed but this remains to be proved. Among these factors is the coincidence in time between military action designed to displace civilian populations and widespread rape of the same populations. Group involvement of the members of the same military units in rape suggests command responsibility by commission or omission; in this respect, the manner in which this type of rape was conducted in multiple locations and within a fairly close period of time (mostly between May and December 1992) is also a significant factor. Another factor in this connection is the contemporaneous existence of other violations of international humanitarian law in a given region occurring simultaneously in prison camps, in the battlefield and in the civilian regions of occupied areas.

70. If further investigations prove that a nexus exists between these activities and the policy of "ethnic cleansing", then it could be argued that rape has been used as an instrument of war and carried out in a manner designed to instil terror, shame and other psychological consequences in a given population group to coerce their removal and prevent their return. However, the

consequences and conclusions of such practices have yet to be determined more fully by comprehensive investigations.

## II. NEXT PROJECTS TO BE UNDERTAKEN BY THE COMMISSION

71. In implementation of its programme of work and with due regard to the request from the Security Council that, pending the appointment of the Prosecutor of the International Tribunal established for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia, "the Commission should continue on an urgent basis the collection of information relating to evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law", 17/ the plan of work of the Commission for the coming months includes the following:

### A. Next stage of work on the database

72. The Commission will continue to analyse, catalogue and enter into the database the allegations of violations of international humanitarian law contained in reports from various sources.

73. As mentioned above, 18/ the Commission is continuing several ongoing studies relating to detention centres, mass graves and mass killings, "ethnic cleansing", allegations of systematic rape and the military and political chronology of the siege of Sarajevo and a study of the activities of the special forces operating in the area.

### B. Investigative missions to Sarajevo and some other regions of the former Yugoslavia

74. The Commission, at its sixth session, decided to send the two rapporteurs accompanied by the Assistant Secretary to the Commission and the Personal Assistant of the Chairman on another mission to Sarajevo from 1 to 10 September 1993. In addition to Sarajevo, the team also intends to visit Zagreb, Knin, Zadar, Pale, Zenica and Belgrade. The purpose of the mission is to collect data, to update the draft study on the battle and siege of Sarajevo, to develop further contacts with national war crimes commissions and to plan future selected on-site investigations/inspections of mass graves. The delegation will seek to confirm the pledge of cooperation from the local authorities with the Commission, primarily for the mass graves investigations.

75. The Commission will send missions to Vukovar and Dubrovnik to conduct battle studies in those areas, to investigate targeting practices, indiscriminate attacks against and mass killings of civilian population and damage to cultural property and to attempt to impute responsibility for prohibited acts. The Commission is also planning to send a mission to Ahmici-Vitez and other areas at a later stage.

## C. Investigations of mass graves

76. The database study 19/ contains allegations of over 200 mass graves in Bosnia and Herzegovina and Croatia. However, because of multiple-sources reporting, with duplication of information as a result, the database analysis suggests a lower figure, namely 98 mass graves as a more correct one at this stage. The number of persons reportedly buried in these graves ranges from 3 to as many as 4,000. Most of the reported graves contain either Serbian or Croatian victims. It should be noted, however, that the existence of a mass grave does not necessarily indicate the existence of violations of international humanitarian law, as the grave may have been created to bury those that died under legitimate circumstances.

77. The Commission has undertaken a more detailed analysis of the available information concerning two reported mass graves in Bratunac and Ovcara. 20/ In Bratunac, a grave containing 39 Bosnian Serbs was reported to have been discovered after Bosnian Serbs recaptured the village from Bosnian-Muslim forces. Those buried in the grave were reported to be mostly women, children and the elderly, victims of a Bosnian-Muslim attack on 7 January 1993. A report alleged that some of the dead had limbs severed or were otherwise tortured before they died. The oldest victim was reported to be an 82-year-old man. However, the Commission has not been able to verify this information as yet.

78. The grave in Ovcara is thought to contain as many as 200 Croatian civilians and soldiers reportedly abducted from the Vukovar Hospital and then executed at the grave site by Yugoslav army and Serbian paramilitary units. A preliminary inspection of the area by the Commission revealed a 10-metre-by-30-metre area of recently disturbed earth; three young adult male skeletons lay partially exposed, one had an exit wound from a gunshot on the left temple. A surface survey yielded a large number of spent 7.62-millimetre cartridges in the bushes north-west of the grave site and bullet scoring on trees to the south-west of the grave site. A test trench was dug that exposed 9 corpses, which would indicate a grave containing as many as 200 persons.

79. For the time being, the Commission is proceeding with preparations of large-scale investigation of two mass graves - in Ovcara (Sector East), referred to above 21/ and the other in Sector West. The preconditions for the operation, which is tentatively scheduled to begin in October 1993, are that the Netherlands military engineering unit remains available, that the local authorities do not withdraw their support and that the security situation in both areas does not deteriorate.

80. While proceeding with the preparations for the exhumation of the remains from the two mass graves, the Commission is preparing at the same time a contingency plan in case any of the preconditions mentioned above are not met. In this case, one or more small investigative teams (three to five persons), including forensic experts and lawyers, will visit an area that would be selected on the basis of information available in the database and which would presumably contain a number of mass graves. These teams will go to the sites of mass graves to make a determination of their existence and to observe and record whatever pertinent facts may be discoverable without a large-scale exhumation within a relatively short period of time.

## D. Investigations of systematic rape

81. The Commission is working out the modalities for the purpose of carrying out investigations into systematic rape. In this regard, the assistance of a number of Member States is deemed indispensable.

82. Therefore, the secretariat is requesting those Member States that have received rape victims from the former Yugoslavia to communicate their whereabouts. The Commission has also established contacts with the local commissions on war crimes operating in Sarajevo, Belgrade, Zagreb and Zenica.

83. It is expected that the formation of female teams for the investigations will be completed in September. The final plan of action will be worked out on the basis of the study on systematic sexual assaults, mentioned above. 22/

## E. Investigations of detention centres and prison camps

84. Reports from Governments, NGOs and individuals describe widespread abuses of human rights in detention facilities in the former Yugoslavia, and especially in Bosnia and Herzegovina. Torture, rape and other forms of physical and psychological mistreatment are reported to have taken place on a large scale. The information catalogued to date 23/ indicates the existence of 393 reported detention facilities, of which 158 are (or if closed, have been) controlled by Serb forces, 64 by Muslim forces and 30 by Croat forces. One hundred forty-one detention facilities alleged to exist have not yet been tied to a specific faction. For instance, a Bosnian government report alleging the existence of a large number of camps does not identify whether they are operated by Serbs or Croats.

85. Notwithstanding the greater reported number of Serb-operated camps, and a greater number of alleged violations there, the reports ascribe grave abuses to all factions. Mass killings, rapes, beatings and torture have reportedly been widespread. Beatings are the most commonly cited form of physical abuse, with many cases reported of prisoners being beaten to death or left to die from injuries sustained during beatings. Conditions of detention have been particularly bad in many camps, with crowded and unfit living quarters, an absence of medical treatment and in some cases the near-starvation of prisoners.

86. On the basis of information available, the Commission would identify those camps to which it would endeavour to send its representatives, and submit appropriate requests to the authorities under whose control the camps are. However, since the majority of camps and detention centres are now closed, and in case there are complications with visits to the existing camps, the Commission will endeavour to get in touch with witnesses who have been detained in the camps. Since those witnesses may now be either in refugee camps or have moved on to resettlement, the success of such investigations will to a great degree depend on the cooperation of the Governments of those countries that have provided refugee camps or resettlement for people from the former Yugoslavia.

## III. RESOURCES AND BUDGETARY REQUIREMENTS

87. The resources available to the Commission are being provided from the regular budget to cover remuneration and travel of its members and the secretariat, and from the Trust Fund set up by the Secretary-General in February 1993 mostly to finance investigatory activities.

### A. Regular budget

88. As mentioned in its first interim report, the Commission has been provided with a regular budget for a period of nine months as from 1 December 1992. At its seventh session, the Commission was informed that additional funds will be allocated to cover its activities until the end of 1993.

### B. Trust Fund

89. As indicated in the Secretary-General's letter of 10 February 1993 to the President of the Security Council, pursuant to the request of the Commission 24/ and in order to make available to the Commission adequate funds to allow it to implement its plan of work, the Secretary-General set in motion the necessary administrative steps for the establishment of a trust fund.

90. On 24 May 1993 the Secretary-General sent a letter to the heads of Permanent Missions in New York requesting their Governments to consider a contribution in terms of financial resources or personnel to assist the Commission in its investigative work.

91. As indicated in the letter, financial contributions should be made to account No. 015-004473, United Nations General Trust Fund Account, Chemical Bank, United Nations Branch, New York, N.Y. 10017.

92. In response to the Secretary-General's appeal, a number of Governments have transferred or pledged their contributions to the Trust Fund: 25/

| | | US$ |
|---|---|---|
| Austria | - | 20 000.00 |
| Canada | - | 237 868.70 |
| Denmark | - | 15 201.07 |
| Federated States of Micronesia | - | 300.00 |
| Liechtenstein | - | 3 184.00 |
| Netherlands a/ | - | 259 067.36 |
| New Zealand | - | 27 583.15 |
| Norway | - | 49 978.00 |
| Sweden | - | 99 132.58 |
| Switzerland | - | 50 000.00 |
| United States b/ | - | 500 000.00 |

a/ The contribution of the Netherlands was designated for systematic rape investigations.

b/ In addition to its financial contribution, the United States has also pledged to donate a significant part of the equipment needed for the mass grave investigations (see para. 62 above).

C. Human resources of the Commission: secretariat staff, investigative teams and support personnel

93. The Commission continues to be serviced by a small staff which includes three Professional staff members provided by the Office of Legal Affairs and two secretaries.

94. In addition to the secretariat staff funded from the regular budget, a number of legal, medical or other specialists provided by Governments or NGOs have been assisting the Commission in its work.

95. About 30 assistants work on the database under the supervision of the Commission's Rapporteur for gathering and analysis of facts in the International Human Rights Law Institute at DePaul University, Chicago, at no cost to the United Nations. They include four salaried attorneys, eight volunteer attorneys, seven paid student assistants, two computer programmers, one documentarian, a media source analyst, a researcher and five other volunteers. All of them have signed undertakings of confidentiality regarding their work on the database. The costs for the operation of the database from December 1992 to December 1993 ($480,000 in direct costs and $250,000 in indirect costs, total $730,000) are covered by a grant from the Souros Foundation and in-kind

contributions of the Institute obtained by the Commission through its Rapporteur.

96. A team of forensic experts (up to 20 specialists) has been provided by Physicians for Human Rights to assist the Commission, at no cost to the United Nations, with investigations of mass graves. Physicians for Human Rights have been able to obtain grants and in-kind contributions for this operation from private sources. The team provides assistance to the Commission under the cooperation service agreement signed with the United Nations on 11 December 1992.

97. A team of military lawyers and police investigators (eight persons) has been provided to the Commission by the Government of Canada. With the exception of salaries, other mission-related expenses of the team are to be paid by the United Nations. The team provides assistance to the Commission under the cooperation service agreement signed on 16 June 1993.

98. The Government of Norway has pledged to provide the Commission with six specialists (forensic experts, military lawyers and police investigators). The specialists, who will assist the Commission under an agreement to be signed between the United Nations and the Government of Norway, will be provided at no cost to the United Nations.

99. The Government of Austria has also indicated that it is considering the possibility of providing three experts on forensic medicine and damage to cultural property and historic monuments to the Commission.

100. The Government of the Netherlands has decided to provide a self-sustaining military engineering unit (up to 50 persons) to assist the Commission with mass grave investigations. An appropriate agreement is to be signed between the United Nations and the Netherlands.

101. In addition, the Commission intends to use for its investigative missions the personal assistants of Mr. Kalshoven and Mr. Opsahl (at no cost to the United Nations) on the basis of agreements to be signed with the authorities of the Netherlands and Norway, respectively.

102. The Commission would like to put on record its appreciation to all Governments and organizations for providing financial and human resources to assist it in its work.

## IV. CONCLUDING REMARKS

103. The Commission was mandated by the Security Council to examine and analyse the information submitted pursuant to resolutions 771 (1992) and 780 (1992), together with such further information as the Commission might obtain through its own investigations or efforts of other persons or bodies pursuant to resolution 771 (1992), with a view to providing the Secretary-General with its conclusions on the evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law committed in the territory of the former Yugoslavia. In May 1993, the Security Council, in its resolution 827 (1993), encouraged the Commission to continue its activities on an urgent

basis, pending the appointment of the Prosecutor of the International Tribunal established to prosecute persons responsible for above violations.

104. The activities undertaken by the Commission in the implementation of its mandate over the seven months that have elapsed since its first interim report was submitted, fall basically into two parts: (a) collecting, evaluating and analysing information with the help of the database and (b) sending investigative missions to the former Yugoslavia to collect and verify the information, to investigate specific incidents as well as to obtain testimonies, to interview victims and witnesses and to hear alleged perpetrators.

105. So far as the database progress is concerned, thousands of pages of information have been gathered and processed and are being analysed on the issues of mass killings and destruction of property, treatment of prisoners and detainees, systematic sexual assaults and "ethnic cleansing". The first preliminary studies, as indicated in note 2, accompany the present interim report. Notwithstanding the qualified evidentiary value of the information contained in the database as such, the database has already proved to be of great assistance to the Commission as a basis and support for its specific missions and investigations. It is also already obvious that, when completed, the results of the database information analysis will provide valuable help to the office of the Prosecutor of the International Tribunal established by the Security Council.

106. During the period under review the Commission has sent five investigative missions to the territory of the former Yugoslavia to collect and verify information on the issues mentioned above. The reports of one of these missions (Sarajevo) accompany the present interim report as indicated in note 2.

107. However, the Commission had to postpone or to limit the scale and scope of its investigative missions and major projects, owing to both the volatile military and political situation in the former Yugoslavia and to the fact that the voluntary contributions of financial and human resources on which the investigative work of the Commission is dependent did not start to come in on a sufficient scale until July-August 1993. However, the resources now at the disposal of the Commission should enable it to enter into a period of intensified verification work, provided that the overall military and political situation in the former Yugoslavia does not present new complications.

108. The programme of work of the Commission for the coming months includes the continuation of ongoing investigative missions to Zagreb, Sarajevo, Knin, Zadar, Pale, Zenica, Belgrade, Ahmici-Vitez, Dubrovnik, etc. The Commission also will send specialized teams of experts to investigate mass graves, systematic rape, detention centres and prison camps.

109. In light of the results of the Commission's work so far and of its projected plans and continued activities, the Commission remains ready and willing to proceed with its work in fulfilment of its broad mandate as set out by Security Council resolution 780 (1992) and in support of the International Tribunal and in particular of its Prosecutor.

## Notes

1/ S/25274, annex I.

2/ The present report is accompanied by the following documents: report on mass graves with analysis of Bratunac and Ovcara (Vukovar); report on camps and detention facilities; study of Sarajevo battle and siege and its appendices; draft preliminary summary and analysis of allegations of systematic rape in the former Yugoslavia; rape pilot study on Bosnia and Herzegovina; report on mortar shelling in Dobrinja district of Sarajevo; report on the battle of Sarajevo and the law of armed conflict. Owing to the preliminary character of these reports, and to their volume, the Commission decided to transmit them to the Secretary-General for information.

3/ The Commission's mandate is to examine and analyse the information submitted pursuant to resolutions 771 (1992) and 780 (1992), together with such further information as the Commission may obtain through its own investigations or efforts of other persons or bodies pursuant to resolution 771 (1992), with a view to providing the Secretary-General with its conclusions on the evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law committed in the territory of the former Yugoslavia.

4/ Professor Frits Kalshoven (Chairman), Professor M. Cherif Bassiouni, Mr. William Fenrick, Judge Kéba Mbaye and Professor Torkel Opsahl. The members of the Commission sit in their personal capacity. Mr. Bassiouni acts as Rapporteur on the gathering and analysis of facts, and Mr. Fenrick acts as Rapporteur for on-site investigations as well as Rapporteur on issues of law.

5/ Official Records of the Economic and Social Council, 1993, Supplement No. 3 (E/1993/23-E/CN.4/1993/122).

6/ S/25274.

7/ The delegation as a whole visited Zagreb and Belgrade. Thereafter, the Chairman went to Ljubljana, while the two rapporteurs went to Sarajevo.

8/ See also para. 76 below.

9/ See also S/25274, annex I, paras. 61 and 62.

10/ The original decision of the Commission at its fifth session was to send an investigative mission to the Ahmici-Vitez area (Bosnia and Herzegovina). However, owing to the rapidly deteriorating security situation in that area and on the advice of UNPROFOR, 10 days before the departure of the mission the Commission had to postpone it and to send the team to Sarajevo instead.

11/ The team also interviewed one rape victim, a 13-year-old girl who was kept captive for 10 days in July 1992 and was a victim of multiple rape.

12/ In addition to the information obtained during the missions to Sarajevo, a large amount of documentation from other sources has been examined by the Rapporteur on the gathering and analysis of facts, resulting in a comprehensive Study of Sarajevo battle and siege (see also para. 36 and note 2

above). This is a day-by-day chronological analysis of 17 months. It indicates that the battle and siege have taken a significant toll on the city and its inhabitants. It is estimated that close to 9,000 Sarajevo inhabitants, including 1,500 children were killed or are missing, and that approximately 53,000 people have been wounded, of whom 14,000 are children. Many of these casualties are the result of sniper fire. Nearly all mosques, Catholic churches and hospitals and numerous other protected targets as well as major commercial buildings and facilities in the centre of the city have been destroyed and, with them, a part of the city's cultural and historical heritage. Furthermore, the shelling has destroyed more than 10,000 and damaged over 100,000 apartments. The city now has fewer than 300,000 residents, down from 600,000 before the war.

13/ See paras. 40-44 above.

14/ See paras. 15 and 17 above. The Commission, however, intends to obtain a written confirmation of these promises before the investigations actually take place.

15/ S/26373 and S/26374.

16/ Draft preliminary summary and analysis of allegations of systematic rape in the former Yugoslavia (see note 2 above).

17/ S/25826.

18/ See paras. 35 and 36 above.

19/ Report on mass graves with analysis of Bratunac and Ovcara (Vukovar) (see note 2 above).

20/ See note 2 above.

21/ See also paras. 57-62 above.

22/ See para. 67 and note 2 above.

23/ The report on camps and detention facilities (see note 2) analyses more closely the available information on the following camps: Keraterm, Omarska, Trnopolje, Manjaca, Stajicevo, Foca Prison, Foca School and Partizan Sports Hall, Luka, Doboj, Zenica, Mostar and Lora.

24/ S/25274 and annex I, para. 71.

25/ Less the expenses already incurred, the balance of the Trust Fund, as of 31 August 1993, amounts to approximately $730,000 in cash and over $380,000 in pledges.

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